IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

FRIDAY, THE 15TH JUNE 2007 / 25TH JYAISHTA 1929

WP(C).No. 12472 of 2005(I)

AGAINST THE ORDER IN EP 256 /2003 IN
OS.806/2000 of MUNSIFF COURT, PERUMBAVOOR

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PETITIONERS:

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1. RUGMINI K.R., AGED 50,
   W/O. VELAYUDHAN, KANDATHIPARAMBIL HOUSE,
   AZHIKKAL DESOM, PUTHUVYPU VILLAGE, KOCHI.

2. RAMESHEN K.V., AGED 33,
   S/O. VELAYUDHAN, AZHIKKEL DESOM,
   PUTHUVYPU VILLAGE, KOCHI.

3. RAJESH K.V., AGED 28,
   S/O. VELAYUDHAN, AZHIKKEL DESOM,
   PUTHUVYPU VILLAGE, KOCHI.

4. RAJEEV K.V., AGED 26,
   S/O. VELAYUDHAN, AZHIKKEL DESOM,
   PUTHUVYPU VILLAGE, KOCHI.

BY ADV. SRI.G.P.SHINOD
SRI.RAM MOHAN.G.
SRI.MANU V.

RESPONDENT:

JAYARAJ S/O. KUNJURAMAN,
AGED 32, RESIDING AT MANGATHU HOUSE,
CHANDAMANGALAM VILLAGE, PARAVUR, ERNAKULAM.

BY ADV. SRI.SAJAN MANNALI
SRI.M.P.JAYAKUMAR
SMT.K.INDU (POURNAMI)

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 15/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PIUS C. KURIAKOSE, J.

W.P.(C) No. 12472 OF 2005

Dated this the 15th day of June, 2007

JUDGMENT

In this writ petition under Article 227, the petitioner who was judgment debtor in a decree for specific performance of a contract for sale of immovable property seeks to set aside Ext.P3 order by which the execution court directed execution of a deed of conveyance in favour of the decree holder and also ordered delivery of the properties so conveyed to the decree holder. The petitioner also seeks a declaration that the entire execution proceedings in E. P. No.256 of 2003 in the suit including the delivery already effected are illegal and void ab initio.

2. Heard Sri.V.Manu, learned counsel for the petitioner and Sri.Sajan Manalil, learned counsel for the respondent. Inviting my attention to Ext.P1 judgment and Ext.P1(a) decree, Mr.Manu submitted that there was no decree for delivery of property. The decree was only for execution of sale deed through the court. The order of delivery according to the learned counsel was thus beyond the decree and hence without jurisdiction. Strong reliance was placed by the learned counsel on the judgment of the Supreme Court in **Adcon Electronics Pvt. Ltd. v. Daulat** [(2001) 7 SCC 698]. The learned counsel submitted that since decree for possession was not granted by the trial court it was

not open to the execution court to grant delivery which will be beyond the terms of decree. Learned counsel also placed reliance on the judgment of this Court in **Joseph v. Joseph** [1997 (1) KLT 663] and submitted that the execution court in any event had no power to order delivery in execution of a decree for specific performance of contract for sale since the power continued to vest with the trial court itself, more so, in this case where there was no prayer in the Execution Petition for delivery.

3. Sri.Sajan Manalil, learned counsel for the petitioner resists the submissions of Mr.Manu very stiffly. Mr.Manalil contended that the delivery is already affected and the petitioner is only crying over spilt milk. There was clear prayer in the plaint for delivery. If at all delivery is not allowed under the decree, the same is due to mistake of the court and the decree holder may not be made to suffer on that.

I have considered the rival submissions in the light of the documents produced by the petitioner and also the judicial precedents cited at the Bar by the learned counsel for the petitioner. I have also gone through the copy of the plaint which was made available for my perusal by Mr.Manalil. It is seen that the suit was for specific performance of an agreement for sale which provided for execution of a sale deed and for obtaining delivery of the property through court in the

event of breach by the defendant. The suit was instituted alleging breach by the defendant, for execution of the sale deed and for delivery. The suit was stiffly contested and the issue was whether the plaintiff is entitled for specific performance of an agreement. That issue was answered in favour of the plaintiff. It is transparently clear that the failure of the court to provide for delivery in the decree was an inadvertant omission on the part of the court which could have been corrected by the court even suo motu invoking powers under Section 152 CPC. The judgment of the Supreme Court in **Adcon Electronics's** case (supra) cannot be of assistance to the petitioner since, as already stated, the present one is a case where the court omitted to exercise the power to grant relief of possession which the court had under Section 22 of the Specific Reliefs Act, even though the plaintiff had specifically prayed for the same. The judgment of this Court in **Joseph's** case (supra) only says that it is not necessary to file a separate execution petition for a person in whose favour a decree for specific performance has been passed for obtaining delivery and that it is open to the trial court itself to order delivery on the basis of an interlocutory application filed under Sub Section 3 of Section 28. The above decision also in my opinion will not come to the petitioner's rescue. At any rate the contention based on Joseph's case is too technical to receive

acceptance from this court sitting in a supervisory jurisdiction under Article 227 which is to be exercised only in exceptional circumstances for sub serving ends of justice. In my opinion no prejudice whatsoever has been occasioned to the petitioner by the issuance of order of delivery by the execution court rather than by the trial court. The Writ Petition fails and will stand dismissed. However, since Mr.Manu submits that the doors are not finally closed for an amicable settlement between the parties even as I dismiss the Writ Petition, I permit the petitioner to approach the Taluk Legal Services Committee, if he believes that there is a chance for settlement. Considering the above direction, the interim order restraining further alienation of the property by the respondent will continue for another three months.

PIUS C. KURIAKOSE, JUDGE

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